

Appl. No. 09/720,180  
Atty. Docket No. CM1987Q  
Amtd. dated May 12, 2004  
Reply to Final Office Action of February 13, 2004  
Customer No. 27752

#### REMARKS

Claims 1-6 and 10-12 have been rejected under 35 U.S.C. §112, ¶1, for failing to comply with the written description of the claims. Specifically, the Office Action alleges that the placement of the material on the inner surface of the inner lining is not disclosed in the Specification.

The test for determining compliance with the written description requirement is “whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language.” *In re Kaslow*, 707 F.2d 1366, 1375; 217 U.S.P.Q. 1089 (Fed.Cir. 1983) (citations omitted).

The applicant does not have to describe exactly the subject matter claimed; instead, the description must simply allow a person of ordinary skill to recognize that the applicant invented what is claimed. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563; 19 U.S.P.Q.2d 1111 (Fed.Cir. 1991). Bottom line -- to satisfy the written description requirement, the disclosure does not have to provide *in haec verba* support for the claimed subject matter at issue. *Purdue PharmaLP v. Faulding*, 230 F.3d 1320, 1323; 56 U.S.P.Q.2d 1481 (Fed.Cir. 2000).

Applying the law to the instant application, it is undisputed that the Specification teaches placing the absorbent material on the inner surface of the inner layer, although there is not verbatim support for doing so. See Applicants’ Amendment after first Office Action faxed Nov. 14, 2003 (pp. 5-6). Further, it is undisputed that the Specification teaches away from placing the absorbent on the outer surface of the inner layer. *Id.* at pp.4-5.

While the Office Action acknowledges placing the absorbent on one surface of the inner layer as taught, it is only required that one of ordinary skill know which of the inner and outer surfaces was in possession of the inventors at the time of filing. Given that the Specification teaches away from the outer surface and teaches towards the inner surface and applying objective standards required by M.P.E.P. §2163.02, one can only conclude that at the time of filing the inventors had possession of placement of the absorbent on the inner surface of the inner layer as claimed.

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Accordingly, the Examiner is respectfully requested to apply the objective standard required by the M.P.E.P., as cited above, and apply the law of the Federal Circuit, as cited above. In the alternative, the Examiner is respectfully requested to justify deviation from the law and the M.P.E.P. Upon application of the law and the M.P.E.P., the Examiner is respectfully requested to consider the limitation of the absorbent being disposed on the inner surface of the inner layer. Upon consideration of this limitation, the Examiner is respectfully requested to reconsider and allow all claims remaining in this Application.

Respectfully submitted,  
D'Acchioli, et al.

By \_\_\_\_\_



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